PTO/SB/33 (11-08)
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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
030977-00002

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on _____

Signature _____

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Application Number	Filed
10/505,161	August 30, 2004
First Named Inventor	
Peter KING	
Art Unit	**Examiner**
1794	Steven N. LEFF

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 60,429

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

Signature

William D. Doyle
Typed or printed name

202-857-6000
Telephone number

December 22, 2008
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:	Confirmation No.: 6683
Peter KING	Art Unit: 1794
Application No.: 10/505,161	Examiner: Steven N. LEFF
Filed: August 30, 2004	Attorney Dkt. No.: 030977-00002

For: PRODUCT COATING METHOD AND APPARATUS

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Date: December 22, 2008

Sir:

In response to the Final Office Action mailed July 23, 2008, the period for response being extended two months from October 23, 2008 to December 23, 2008 with payment of the appropriate fees, Applicants respectfully submit that the Office Action is factually incorrect, and hereby submits this Pre-Appeal Brief Request for Review. This request is not accompanied by an amendment to the currently pending claims, and is being filed with a Notice of Appeal.

The Office Action of July 23, 2008 rejected Claims 5-8 under 35 U.S.C. § 112, second paragraph, as being indefinite because the term "high", when used in claim 5 as part of the phrase "high voltage charging circuit", does not reasonably apprise one of ordinary skill in the art of the scope of the invention. The rejection is traversed as being factually and legally erroneous.

Please see the remarks/arguments of record presented in the Applicant's October 23, 2008 Response to Final Office Action at pages 5 to 6. The arguments provide evidence that "high voltage" is a term of art that is clear and unambiguous in meaning to a person of ordinary skill in the art of electrostatics, namely a voltage of the order of thousands or tens of thousands of Volts. This is further supported by the cited prior art in

that Yonkers, U.S. patent number 3,221,938, also refers to a high voltage source 34 (see column 2, lines 51-54, and Fig. 1). Contrary to the assertion in the November 5, 2008 Advisory Action on page 2, the Applicant's argument is not that the Specification provides the definition for the term "high voltage", the Applicant merely provides evidence that the disclosure is in accordance with the meaning of "high voltage" as a term of art. As such, the Applicant respectfully submits that the Examiner's arguments are in error because the term "high" in "high voltage" would not be interpreted by one of ordinary skill in the art as a purely relative term.

The Office Action of July 23, 2008 rejected Claims 1 and 4 under 35 U.S.C. § 102(b) as being anticipated by Dunaway (U.S. Patent No. 3, 114,482). The rejection is traversed as being factually and legally erroneous.

Claim 1 recites a method of coating a product that includes an inclined chute down which a coating substance falls under gravity. As argued on page 7 of the October 23, 2008 Response, the Office Action is erroneous in the assertion that the wiper blade 40 is the same as the inclined chute recited in Claim 1 (see page 3, lines 2-4, of the Office Action). As disclosed in Col. 2, ll. 32-70, of Dunaway, powder is not dispensed from the wiper blade 40. Rather, as disclosed in the last full sentence of the last full paragraph of Col. 2 of Dunaway, "[i]t is easily seen from FIG. 1, that the upper surfaces of the blades in combination with the upper surface of the roller subtended thereby form a container from which dry, particulate powder 50 may be dispensed." As such, the reservoir B in Dunaway is provided with a bottom surface comprising the upper surface of a roller 30, and the lower parts of the walls of the reservoir B which are in contact with the roller 30 are the wiper blades. Wiper blade 40 forms part of a container. Accordingly, Dunaway does not teach or suggest that the wiper blade 40 is an inclined chute.

Moreover, as disclosed in Col. 3, ll. 47-57, of Dunaway, the "powder 50 is placed in the reservoir B so that it is predisposed to move toward the roller 30 and the blade 40. . . the powder 50 will tend to cling in a fine film to the surface of the roller as it passes by the free end of the blade 40 resiliently urged into peripheral contact therewith. A small portion of the powder 50 will fall of its own weight from the roller surface...." As disclosed by Dunaway, the powder will fall of its own weight from the roller surface after have passed by the free end of the blade 40, rather than falling under gravity from the end of the inclined

chute in the direction of a surface carrying the product, as recited by Claim 1. The July 23, 2008 Final Office Action, on page 3, and, in particular, the second paragraph on page 2 of the November 5, 2008 Advisory Action, erroneously characterize the passage quoted above. It is by action of the roller 30 that powder is dispensed in Dunaway, not from a chute, and certainly not by means of the wiper blade 40.

Furthermore, as argued on pages 7-8 of the October 23, 2008 Response, the Applicant submits that Dunaway does not disclose or suggest that the falling coating substance is dispersed by a pressurized gas stream, as recited by Claim 1. The Advisory Action on page 2 cites language in the rejection that is not supported, explicitly or implicitly, with respect to the disclosure of Dunaway. Moreover, official notice has never been taken for the unsupported interpretations applied by the Examiner. The cited passage, Col. 1, lines 63-66, of Dunaway, actually discloses that a "fine cloud of material" is "confined within a prescribed limited zone." As later stated again in Col. 4, ll. 17-19, Dunaway teaches that the air streams "maintain the dusting cloud within a generally restricted zone." Dunaway clearly and specifically teaches away from the air streams being used to disperse the coating substance.

With respect to the Advisory Action's argument on page 2 that the particles of the powder in Dunaway are charged, Applicant respectfully refers to the arguments on page 8 in the October 23, 2008 Response. Dunaway specifically teaches the undesirability of having the particles of powder take on a charge (Col. 1, ll. 24-32). If the powder in Dunaway were to retain its charge, then it would be attracted to the electrostatic tube element 70. Dunaway's powder falls gravitationally (see Col. 4, ll. 15-16). In contrast, the present invention subjects the powder to a pressurized gas stream and an electric field by virtue of an electrode being placed in the gas stream whereby the powder takes on a charge and is attracted to the products to be flavored, which sit upon a grounded surface such as a rotating drum (see Fig. 1).

Claims 1-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Yonkers et al. (U.S. Patent No. 3,221,938) in view of Watkins (U.S. Patent No. 3,468,691). The rejection is traversed as being factually and legally erroneous.

As with Dunaway, Yonkers also teaches wiper blades. As with Dunaway, Yonkers discloses a "dispensing roller 10" that has a surface prepared "to provide a large number of

powder carrying cavities" (see Col. 2, ll. 33-36). As further disclosed in Col. 2, ll. 29-32, of Yonkers, the roller and blades are configured as in Dunaway. For the same reasons as discussed above, the final Office Action, on page 4, erroneously characterizes the wiper blades 70,72 in Yonkers as an inclined chute (see October 23, 2008 Response, pages 9-10). As with Dunaway, if the roller is removed, then what is left might be regarded, at best, as a funnel, but with little practical use as there would be no means to dispense the powder in a fine cloud of ink suitable for the intended purpose of both Dunaway and Yonkers in the art of printing technology.

The Applicant respectfully submits that the Advisory Action incorrectly interprets the function of Yonkers in asserting that the alternating electric field imparts a charge to the particles. Rather, as in Dunaway, the high voltage electrode 30 in Yonkers is alternately oppositely charged to the dispensing roller 10 (see Col. 2, ll. 46-62 of Yonkers). The roller 10 is cleaned by the attraction of the opposite charge as provided by the electrode; but when the charge dissipates, due to the alternating current, the powder falls.

Moreover, the assertion on page 2 of the Advisory Action that "gas jet nozzle 94 is substantially immediately below the area depicted by the exit end of the chute 72" is simply not supported by Fig. 4 as claimed. Fig. 4 in Yonkers shows that the gas jet nozzles 95 are clearly separated from the end of wiper blade 72 by a side panel 53, wiper blade 70, and the dispensing roller 60. The plenum chamber 94 cited by the Examiner is parallel to and not "substantially immediately below the area depicted by the exit end of the chute 72." As such, Yonkers does not teach or suggest that the nozzles 95 are substantially immediately below the exit of the wiper blade 72. Significantly, as discussed above, the wiper blade 72 is mischaracterized as an inclined chute.

Furthermore, as with Dunaway, the Advisory Action, on page 2, last full paragraph, cites reasoning that is not taught or suggested explicitly or implicitly by the disclosure in Yonkers. Official notice has never been taken for the unsupported interpretations applied by the Examiner. The cited passage, Col. 4, lines 32-37, of Yonkers, discloses again that the jets create an air curtain to "confine the powder material." As with Dunaway, Yonkers clearly and specifically teaches away from the air streams being used to disperse the coating substance (see arguments in October 23, 2008 response in paragraph bridging pages 10 and 11).

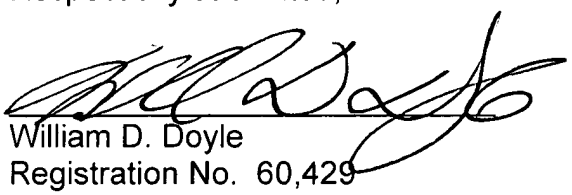
The Examiner's rejections are clearly in error by asserting that Dunaway qualifies as prior art under 35 U.S.C. §102 or that Yonkers in view of Watkins establishes a *prima facie* case of obviousness under 35 U.S.C. §103. Dunaway does not disclose, teach or otherwise suggest each and every feature recited by Claim 1. Dunaway, Yonkers and Watkins, alone or in combination, do not teach or suggest the features of Claims 1 and 5.

For the above reasons, Claims 1 and 5 are allowable over the prior art of record. Claims 2-4 depend from Claim 1 and Claims 6-8 depend from Claim 5. It is respectfully submitted that these dependent claims are allowable for the same reasons Claims 1 and 5 are allowable, as well as for the additional subject matter recited therein. A favorable decision and allowance of all pending claims are earnestly solicited.

With respect to the provisional double patenting rejection, as explained on pages 11 and 12 of the October 23, 2008 Response, the three later patent applications are directed to different inventions. Moreover, the Applicant respectfully requests that the provisional rejection be held in abeyance until allowable subject matter is found in one or more of the pending applications.

In the event this paper is not considered to be timely filed, Applicants respectfully petition for an appropriate extension of time. Any fees for such an extension, together with any additional fees that may be due with respect to this paper, may be charged to counsel's Deposit Account No. 01-2300, **referencing Attorney Dkt. No. 030977-00002**.

Respectfully submitted,



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Enclosures: Notice of Appeal (Form PTO/SB/31)
Pre-Appeal Brief Request for Review (Form PTO/SB/33)
Petition for Extension of Time (2 months)